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International commercial arbitration in Uzbekistan: current state and development prospects

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ABSTRACT

This article is devoted to a number of issues relating to the functioning of international commercial arbitration as a non-State mechanism for the settlement of international commercial disputes in the Republic of Uzbekistan. In article also found a brief introduction on the history of arbitration in Uzbekistan since its independence. Special attention is paid to the rules introduced since the entry into force of the Law of the Republic of Uzbekistan "On international commercial arbitration". Moreover, the author highlights some problematic issues and inconsistencies that exist in the legislation on legal proceedings in arbitration courts. The author also addresses several issues regarding the recognition and enforcement of arbitral awards.

Key words: commercial arbitration, alternative dispute resolution, commercial disputes, Tashkent International Arbitration Center (TIAC), TIAC Rules of Arbitration, Civil Procedure Code of the Republic of Uzbekistan, Economic Procedure Code of the Republic of Uzbekistan, Law of the Republic of Uzbekistan "On international commercial arbitration".

1. INTRODUCTION

At present, alternative dispute resolution (ADR) is gaining momentum in many economically developed countries of the world thanks to its speedy, low-cost mechanism of dispute settlement. Statistics show, that ADR remains the most effective way to reach the desired settlement of nearly 25-50 percent of the overall disputes in those states [1].

One of the most popular means of resolving foreign commercial disputes, which most companies prefer to traditional litigation, is international commercial arbitration. For most States, commercial arbitration has been playing a significant role in dispute resolution, while for others, like Uzbekistan, arbitration is relatively new and year by year gets more attention.

2. MAIN PART

Uzbekistan's first and main step towards improving the country's investment climate and integration into the world arbitration system was acceding to the international agreements in this area, in particular, Uzbekistan's accession on May 7, 1993 to the Convention on the settlement of investment disputes between States and nationals of other States (Washington, 1965), and on December 22, 1995 – to the New York Convention of June 10, 1958 on the recognition and enforcement of foreign arbitral awards, which became a great incentive for providing international legal guarantees and protection of foreign investors.

The 1958 New York Convention, to which 166 countries have acceded as of 2020, is the central feature in the system of international treaties and arbitration laws and provides for the use of arbitral awards and arbitration agreements. Article III of the New York Convention obliges its contracting states to recognize and enforce arbitral awards [2].

Moreover, the establishment of the International commercial arbitration court in 2011 and the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan in 2018 opened a wide path for the introduction of alternative mechanisms for resolving commercial disputes and increasing the country's investment attractiveness. The main objectives of TIAC are:

- "- resolution of disputes between commercial organizations located in different countries, including disputes related to investment, intellectual property, and blockchain technologies;
- development and improvement of dispute resolution mechanisms through international arbitration and other alternative dispute resolution methods;
- establishment of cooperation with leading foreign arbitrations, exchange of experience in the field of dispute resolution through international arbitration, as well as involvement of foreign arbitrators in dispute resolution in the Center;
- participation in the implementation of measures to train and improve the skills of specialists in the field of international arbitration and out-of-court dispute resolution, including those related to investments, as well as the organization of research in this area;
- providing consulting services to companies, including foreign investors, in the field of preventing disputes related to investments, including those where the state is one of the parties" [3].

In order to actively attract foreign arbitrators to TIAC, since domestic arbitrators do not have enough experience in the field of arbitration, benefits were approved: the center's arbitrators, who are non-residents of the Republic of Uzbekistan, are exempt from paying personal income tax in part of the funds received as a fee for performing the functions of an arbitrator. To hire them, you will not need to get a work permit in Uzbekistan [3].

However, it should be noted that although the TIAC is responsible for disputes related to new technologies,

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this arbitration center does not have special rules for resolving digital disputes, which in recent years, according to experts, will become widespread in most countries by 2025. Many companies around the world are developing prototypes of a technology platform that will automatically conclude blockchain contracts, or, they are also referred to as "smart contracts". Smart contracts are "agreements recorded in the form of computer codes that can be automatically executed upon the occurrence of conditions specified in such agreements without any additional actions on the part of counterparties" [4]. The numerous advantages of smart contracts (such as the possibility of disintermediation, cost reduction, etc.) cannot exclude the possibility of disputes, the number of which will increase over time. As a result, such disputes will be considered under the general rules established by the TIAC Rules of Arbitration of 2019.

The next important stage in the revival of arbitration courts and international commercial arbitration in Uzbekistan was the approval by the Senate of the Oliy Majlis of the Republic of Uzbekistan on September 11, 2020 of the Law of the Republic of Uzbekistan "On international commercial arbitration", which should enter into force six months after its publication [5].

Developed in accordance with international practice and in accordance with the rules of the UNCITRAL Model law on International Commercial Arbitration, this law consists of 10 chapters, which include 55 articles. It includes: the scope of the law and basic concepts; the nature and content of the arbitration agreement, the order of presentation of the claim; requirements for the composition of arbitrators; appointment of arbitrators; grounds and procedure of challenge of arbitrator; competence of the arbitration; the order in which the arbitral award is rendered, its form and contents; procedure for challenging the arbitral award; conditions for recognition and enforcement of arbitral awards [6].

The law provides for the rule on the immunity of arbitrators and participants in arbitral proceedings, which involves the involvement of qualified arbitrators in the process and providing them with a guarantee that they will not be held liable for honest performance of work.

Moreover, this law, in accordance with international standards, contains a provision that explicitly states that "no person may be deprived of the right to act as an arbitrator on the basis of their nationality, unless the parties have agreed otherwise". While Law of the Republic of Uzbekistan "On arbitration courts" provides for additional requirements for arbitrators, such as citizenship, age, etc. [7], the Law "On international commercial arbitration" states that all these details can be directly agreed upon by the parties to the agreement. It follows that arbitrator may be a citizen of any state and of the qualifications determined by the parties.

Law "On international commercial arbitration" of the Republic of Uzbekistan is largely consistent and interacts with the norms of the Civil Procedure Code of the Republic of Uzbekistan, which regulates certain issues of arbitration.

At the stage of filing of the application under the Chapter 11 of Civil Procedure Code of the Republic of Uzbekistan, in accordance with the requirements of Article 122 ("A basis for leaving the application without consideration"), the court leaves the application without consideration, if "the parties have concluded an arbitration agreement to transfer this dispute to the arbitration court" [8].

It is also worth noting that until recently, the Law of the Republic of Uzbekistan "On advocacy" did not provide for direct permission for attorneys to act as an arbitrator, while the Law of the Republic of Uzbekistan "On arbitration courts" did not include such a ban. But the Law of the Republic of Uzbekistan "On amendments and additions to some legislative acts of Uzbekistan in connection with improvement of the system of legal aid and legal services" dated 12 October 2018 fixed this unresolved issue, supplementing Article 3 of the Law of the Republic of Uzbekistan "On advocacy" opportunity for attorneys to act as arbitrator [9], and, thus, preventing the risk of appeal by a competent State court against decisions made by a panel of arbitrators with the participation of attorneys.

One of the reasons for the continued popularity of international commercial arbitration as a means of dispute resolution is the ability to recognize and enforce decisions almost worldwide. In accordance with the legislation of the Republic of Uzbekistan, "decisions of foreign courts and international arbitrations adopted by them on disputes and other cases arising in the economic sphere are recognized and enforced by the economic courts of the Republic of Uzbekistan" [10]. Also, it is worth noting that "when considering an application, the court does not have the right to review the decision of a foreign court or a foreign arbitration court (arbitration) on the merits" [8]. Civil Procedure Code and Economic Procedure Code of the Republic of Uzbekistan contain a list of grounds on which recognition and enforcement of decisions of a foreign court or arbitration may be refused. However, it should be emphasized that the Civil Procedure Code provides in its Article 370 uniform grounds for refusal of recognition and enforcement for both foreign court decisions and international arbitration decisions [8]. While the Economic Procedure Code of the Republic of Uzbekistan contains two articles establishing grounds for refusal to recognize and enforce a foreign court decision (Article 255) and a foreign arbitration decision (Article 256).

In addition, there are a number of differences in the economic and civil procedure codes of the Republic of Uzbekistan, which include different courts that consider applications for recognition and enforcement of a foreign court or arbitration decision (in economic courts, such applications are considered by second-tier courts, and in civil courts – by first-tier courts), different terms of consideration of applications (in economic courts such applications are considered within six months, and in civil courts – within one month from the date of receipt of the application for recognition and enforcement of the decision of a foreign court or arbitration). Undoubtedly, such existing discrepancies in the economic and civil procedure codes of the Republic of Uzbekistan can become a significant barrier to the formation of uniform judicial practice and increasing the confidence of the international community in the judicial and legal system of the country [11].

3. CONCLUSION

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Commercial arbitration as an alternative to the state court is regarded as a positive phenomenon that significantly contributes to easing the burden on state justice in resolving conflicts that arise between participants in civil turnover, and the effective development of international cooperation.

Further development of arbitration, of course, is one of the main tasks of the Republic of Uzbekistan and is feasible only with the support and understanding of the legal nature of arbitration as an alternative method of dispute resolution by state courts.

In this regard, it is particularly important to hold various events aimed at popularizing and developing the Institute of arbitration in Uzbekistan, in particular, frequent scientific and practical seminars for students, practicing lawyers, and judges who face problems with the application of arbitration legislation in cases involving the cancellation and enforcement of arbitral awards. It is also important to train and professionally develop the skills of arbitrators in order to improve the quality of disputes under consideration.

In conclusion, it should be noted that due to the ongoing reforms in the field of international commercial arbitration in Uzbekistan, arbitration of disputes can become an effective method of resolving commercial disputes, thereby stimulating both the formation of the rule of law and the integration of the Republic of Uzbekistan into the world community.

REFERENCE

- Kuchimov U., Recognition and Enforcement of Arbitral Awards and the Practice of Uzbekistan regarding Arbitral Awards // Tashkent, 2007. // URL: file:///C:/Users/WINDOWS%2010/Downloads/SSRN-id1886633.pdf
- 2. New York Convention of 1958
- 3. Decree of the President of the Republic of Uzbekistan "On the establishment of the Tashkent International Arbitration Center (TIAC) at the Chamber of Commerce and Industry of the Republic of Uzbekistan" / November 5, 2018, No. DP-4001
- 4. Smart Contracts: Is the Law Ready? Prepared by: Smart Contracts Alliance An Initiative of the Chamber of Digital Commerce // URL: https://digitalchamber.org/smart-contracts-whitepaper
- 5. http://senat.uz/ru/lists/view/1831
- 6. Otakhonov F., Perspektivi razvitiya mejdunarodnogo arbitraja v Uzbekistane // the Chamber of Commerce and Industry of the Republic of Uzbekistan, 2018. URL: https://zenodo.org/record/3357910/files/RND_2018_10-12_pp58-61.pdf?download=1
- 7. Law of the Republic of Uzbekistan "On arbitration courts" / October 16, 2006, No. 64.
- 8. Civil Procedure Code of the Republic of Uzbekistan / January 22, 2018.
- 9. Law of the Republic of Uzbekistan "On amendments and additions to some legislative acts of Uzbekistan in connection with improvement of the system of legal aid and legal services" / October 11, 2018, No. 497.
- 10. Economic Procedure Code of the Republic of Uzbekistan / January 24, 2018.
- 11. Analyses: Priznanie i privedenie v ispolnenie resheniy inostrannix sudov i mejdunarodnix arbitrajey v Respublike Uzbekistan: tekushee sostoyanie i problem // Tashkent, 2019. URL: http://arbitrationblog.kluwerarbitration.com/wp-content/uploads/sites/48/2019/11/2019-Recognition-and-enforcement-of-foreign-court-judgments-and-foreign-arbitral-awards-in-the-Republic-of-Uzbekistan.pdf